

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0450-02
Bill No.: SCS for SB 69
Subject: Administrative Rules; Boards, Commissions, Committees, Councils; Business and Commerce; Corporations; Economic Development Department; Courts.
Type: Original
Date: February 24, 2003

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
General Revenue	(\$94,400 to Unknown)	(\$100,006 to Unknown)	(\$79,656 to Unknown)
Total Estimated Net Effect on General Revenue Fund	(\$94,400 to UNKNOWN)	(\$100,006 to UNKNOWN)	(\$79,656 to UNKNOWN)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
Various	(Unknown)	(\$63,968 to Unknown)	(\$57,132 to Unknown)
Total Estimated Net Effect on Other State Funds	(UNKNOWN)	(\$63,968 to UNKNOWN)	(\$57,132 to UNKNOWN)

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 11 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
None			
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

In response to a previous version of this proposal, officials from the **Department of Economic Development (DED)** stated this legislation creates a Small Business Regulatory Fairness Board and defines small business as a for-profit entity consisting of fewer than 100 full or part-time employees. DED's Business Development Group would provide staffing to support the activities of the Small Business Regulatory Fairness Board (SBRFB). DED assumed the SBRFB would be assigned to DED. DED would have to provide meeting space for the 9 SBRFB members plus expenses. Four meetings are projected even though 2 are required per year. Costs include overnight lodging (\$70), mileage (\$.335 x 240 Round Trip = \$80.40), and one day's meals (\$45.00 for 3) plus miscellaneous for printing, meeting room, etc. for each meeting (\$250). Total cost for 9 members = 9 X 195.40 each plus \$250 or \$2,008.60 each meeting. DED anticipated the board would need the assistance of an attorney 1/4 time each year. DED would be required to provide support to the SBRFB. This would require one Business Information Specialist II.

ASSUMPTION (continued)

DED assumed the support for the SBRFB would include computer equipment, office space and expense and equipment funding to cover expenses for the Board. DED assumed the fiscal impact of this proposal would be about \$105,000 per year.

In response to a previous version of this proposal, officials from the **Department of Economic Development - Division of Professional Registration (DPR)** stated they currently process and prepare hundreds of rules annually (including rule fiscal notes) for all 37 boards and the division. It is assumed that the preparation of this additional information (small business impact statement) will require a significant additional amount of time for research and preparation. DPR assumed the need for an additional Budget Analyst II (at \$37,488) to assist DPR's Director of Budget and Legislation with the research and preparation that will be required to prepare a small business impact statement. DPR stated the expenses resulting from this proposal (estimated to be roughly \$60,000 per year starting in FY 2005) will be billed back to the various board funds in accordance with the Division's Cost Allocation Plan.

Officials from the **Department of Social Services - Division of Medical Services (DMS)** stated under this proposal, they may have to hold a public hearing on every proposed rule. DMS stated they currently use Missouri Regulations as a notice for public hearings, which is held within 30 days. If Missouri Regulations are no longer used as the notice, DMS would have to use the newspaper for such notices. This would cost DMS several thousand dollars per hearing.

DMS also stated the provision of the proposal regarding retroactive review of current existing rules would create additional expense for their agency. In all, DMS assumed this proposal would have a fiscal impact on their agency of an unknown amount, greater than \$100,000 for advertising costs, holding additional hearings and staff costs for retroactive review.

In response to a previous version of this proposal, officials from the **Office of Administration - Design and Construction (COA - DC)** stated the reporting and record keeping required by this proposal would require the addition of 2 FTE's. One Contract Specialist I (at \$29,592 annually) and one Clerk I (at \$16,452 annually). COA - DC estimates a cost of roughly \$68,000 per year.

Oversight assumes the COA - DC would not need additional FTE as a result of this proposal.

Officials from the **Office of Secretary of State (SOS)** assume there would be costs due to additional publishing duties related to the Small Business Regulatory Fairness Board's authority to

ASSUMPTION (continued)

promulgate rules, regulations, and forms. SOS estimates the division could require approximately 36 new pages of regulations in the Code of State Regulations at a cost of \$27.00 per page, and 54 new pages in the Missouri Register at a cost of \$23.00 per page. Costs due to this proposal are estimated to be \$2,214, however, the actual fiscal impact would be dependent upon the actual rule-making authority and may be more or less. Financial impact in subsequent fiscal years would depend entirely on the number, length, and frequency of the rules filed, amended, rescinded, or withdrawn. SOS does not anticipate the need for additional staff as a result of this proposal; however, the enactment of more than one similar proposal may, in the aggregate, necessitate additional staff.

Oversight assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which require the printing and distribution of regulations at substantial costs, the SOS could request funding through the appropriation process. Any decisions to raise fees to defray costs would likely be made in subsequent fiscal years.

Based on SOS' response to a similar proposal (SB 873) from 2000, SOS stated the proposal also requires agencies to file proposed rules and a small business impact statement with the small business regulatory review board. The impact statement is not currently filed with proposals of rule-making submitted to the Secretary of State. If the impact statements must be published then the Secretary would publish 1,405 additional pages in the *Missouri Register* each year, assuming 1,125 proposed rules with 1.25 page impact statements, at a cost of \$31,635 per year. It is assumed that the impact statements would not have to be published.

The proposal requires agency rules be reviewed by the new Board every other year. Rules could be amended or rescinded. If seven percent (7%) of rules would be changed during initial reviews, 350 *Code* pages would be published. Approximately 175 *Register* pages would be published. Costs for publication in future years would depend upon the number of rules changed due to reviews. Costs for the first two fiscal years are estimated at \$22,413.

Officials from the **Department of Conservation (MDC)** state this proposal could have fiscal impact on MDC funds because of the potential effect of MDC regulations on small business such as commercial fishermen, wildlife breeders, licensed shooting areas and permit vendors. The amount of fiscal impact is unknown.

Officials from the **Office of the Attorney General (AGO)** state this proposal would require additional steps in the rule-making process, requiring additional staff time in counseling agencies and commissions. ASSUMPTION (continued)

AGO assumes these costs could be absorbed with existing resources. AGO also states that additional steps in the rule-making process will also provide specific additional bases for litigation on the validity of rules, which will require additional staffing. Because the volume of additional litigation is unknown, AGO assumes the cost of this portion of the proposal is significant but unknown. In addition, the proposal creates an adversarial hearing process before the newly created board. Agencies may desire legal representation at these hearings, resulting in additional unknown costs.

AGO assumes that the new section 620.062 would not apply to chapter 407 civil penalties - these penalties are awarded by a court, or as a result of consent judgments (out of court settlements). If section 620.062 were construed to apply to chapter 407, the proposal would result in a significant (greater than \$100,000) cost to the Merchandising Practices Revolving Fund.

Officials from the **Department of Labor and Industrial Relations (DOLIR)** state the cost of the legislation will depend on how many petitions are filed by small business owners and how many hearings DOLIR will have to attend before DED. DOLIR assumed the cost to be unknown, but under \$100,000 in any given fiscal year.

In response to a previous version of this proposal, officials from the **House of Representatives** assumed the cost resulting from this proposal would be minimal. But if similar proposed legislation is passed, the House could face a need for an increase in travel money to reimburse House Members.

Officials from the **Missouri Public Service Commission (PSC)** state they currently provide a small business economic impact statement in accordance with Executive Order 96-18. However, the proposed bill not only would require this agency to state whether the rule will affect small business, but if small business is affected it must also give the availability and practicability of less restrictive alternatives. This would, in effect, require the drafting of several rule proposals. These multiple proposals would entail additional time and expense for the various departments as well as for senior supervisory personnel who must review the rules.

The proposal may also cost the PSC the additional time and expense of defending current rules before the Board. This defense would likely involve the efforts of higher-salaried personnel, such as engineers, accountants, financial analysts and legal staff in addition to senior supervisory personnel. The level of cost could vary widely dependant upon the content of each new rule and the number of current rules that are subject to complaint. Because of a number of unknown variables, the increased costs of proposing alternatives to new rules and reviewing and defending current rules cannot be determined at

ASSUMPTION (continued)

this time, but it is clear that there will be additional costs incurred due to this proposed legislation.

Officials from the **Department of Transportation (MoDOT)** state this legislation could require significant time to fulfill the legislation's requirements that would result in monetary costs to their agency.

MoDOT assumes that this legislation could have a potentially significant fiscal impact due to several variables, such as the number of rules issued that may affect small businesses; the amount of staff time devoted to holding and recording public hearings, preparing fiscal impacts analyses, and presenting those to a "Small Business Regulatory Fairness Board." MoDOT states that it is difficult to estimate the fiscal impact of this legislation.

Officials from the **Office of the State Treasurer** defer to the Office of the Secretary of State for the fiscal impact estimate of this proposal.

Officials from the **Department of Natural Resources (DNR)** state that due to uncertainties with the number of instances in which a state rule may be appealed by a small business, DNR was unable to determine the fiscal impact of this legislation.

Officials from the **Office of the State Courts Administrator (CTS)** state that with this proposal, a small business that is adversely affected by a final agency action may seek judicial review of the agency's compliance with the provisions of the act. CTS assumes there may be some increase in the workload of the courts depending on the number of small businesses that seek review of an agency action, but CTS has no way of knowing or determining what that increase might be.

Officials from the **Department of Insurance, Lt. Governor's Office, Missouri Lottery Commission, Missouri Senate, University of Missouri, Department of Elementary and Secondary Education, Office of Administration - Director's Office, Facilities Management and the Division of Purchasing and Materials Management, Department of Higher Education, Office of the Governor, Department of Mental Health, Missouri Gaming Commission, Department of Public Safety - Divisions of Missouri Highway Patrol, Missouri Veterans' Commission, Fire Safety, Office of the Adjutant General, Missouri State Water Patrol, Liquor Control, Highway Safety and the State Emergency Management Agency and Truman State University** each assume this proposal would not fiscally impact their respective agencies.

ASSUMPTION (continued)

In response to a previous version of this proposal, officials from the **State Tax Commission, Department of Social Services - Divisions of Child Support Enforcement and Family Services, State Auditor's Office, Department of Agriculture, Department of Health and Senior Services** and **Southwest Missouri State University** each assumed this proposal would not fiscally impact their respective agencies.

Officials from the **Department of Revenue, Department of Corrections** and **Southeast Missouri State University** did not respond to our request for fiscal impact.

Oversight has listed an unknown cost to "various state agencies" for costs associated with holding public hearings on proposed rules and rule changes, review of the agency's rules to determine if they may impact small business, and other administrative issues that may arise as a result of this proposal.

<u>FISCAL IMPACT - State Government</u>	FY 2004 (10 Mo.)	FY 2005	FY 2006
GENERAL REVENUE FUND			
<u>Costs</u> - Department of Economic Development (DED)			
Personal Service (1 FTE)	(\$30,760)	(\$37,835)	(\$38,781)
Fringe Benefits	(\$12,449)	(\$15,312)	(\$15,695)
Expense and Equipment	<u>(\$28,778)</u>	<u>(\$24,446)</u>	<u>(\$25,180)</u>
<u>Total Costs</u> - DED	<u>(\$71,987)</u>	<u>(\$77,593)</u>	<u>(\$79,656)</u>
<u>Costs</u> - various state agencies that estimated an unknown fiscal impact for administrative costs including additional hearings, review of all rules, small business impact statements, appeals, reports and judicial reviews	(Unknown)	(Unknown)	(Unknown)

Costs - Secretary of State

Publication of Rules	<u>(\$22,413)</u>	<u>(\$22,413)</u>	<u>(Unknown)</u>
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ESTIMATED NET EFFECT TO THE GENERAL REVENUE FUND	<u>(\$94,400 to Unknown)</u>	<u>(\$100,006 to Unknown)</u>	<u>(\$79,656 to Unknown)</u>
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VARIOUS OTHER STATE FUNDS

Costs - Professional Registration

Personal Service (1 FTE)	\$0	(\$39,386)	(\$40,370)
Fringe Benefits	\$0	(\$15,940)	(\$16,338)
Expense and Equipment	<u>\$0</u>	<u>(\$8,642)</u>	<u>(\$424)</u>
<u>Total Costs - DED</u>	<u>\$0</u>	<u>(\$63,968)</u>	<u>(\$57,132)</u>

Costs - various state agencies
 that estimated an unknown fiscal impact
 for administrative costs including
 additional hearings, review of all rules,
 small business impact statements,
 appeals, biannual reports and judicial
 reviews

<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
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ESTIMATED NET EFFECT TO VARIOUS OTHER STATE FUNDS	<u>(UNKNOWN)</u>	<u>(\$63,968 TO UNKNOWN)</u>	<u>(\$57,132 TO UNKNOWN)</u>
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FISCAL IMPACT - Local Government

FY 2004
(10 Mo.)

FY 2005

FY 2006

\$0

\$0

\$0

FISCAL IMPACT - Small Business

Small businesses would benefit from reductions in administrative rules governing their operations, less administrative sanctions, and more flexible enforcement of existing rules.

DESCRIPTION

This proposal requires state agencies which are proposing rules to consider alternative compliance methods for small businesses and to prepare a small business impact statements.

The proposal creates the Small Business Regulatory Fairness Board. The Department of Economic Development will provide staff for the Board. The Board shall provide agencies with input regarding proposed rules, consider requests from small business owners for review of agency rules, review agency rules and make recommendations to the agency and general assembly regarding the need for a rule or legislation, conduct hearings and solicit input from regulated small businesses and prepare an annual evaluation report to the Governor.

The Board shall consist of two members appointed by the Governor, one member appointed by the Lieutenant Governor, two members appointed by the House of Representatives, two members appointed by the Senate, one member appointed by the Speaker of the House and one member appointed by the President Pro Tempore of the Senate.

Small business owners may petition an agency objecting to any rule, and the agency shall forward the petition to the Board and the Joint Committee on Administrative Rules. The agency must determine whether its impact statement or public hearing addressed the actual impact on small business and will submit a written response to the Board. The agency may determine the petition warrants adoption of amended or new rules, or may determine no additional action is necessary. A small business may seek review of the agency's decision by the Board. The Board shall report its findings to the Governor and General Assembly, which may take action as appropriate.

A small business that is adversely affected by a final agency action may seek judicial review of the agency's compliance with the provisions of this proposal. The period for seeking judicial review shall begin on the date the proposed rule becomes final and shall end a year later.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

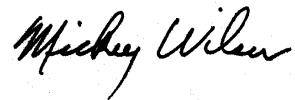
SOURCES OF INFORMATION

Office of the State Courts Administrator
Department of Economic Development
Department of Elementary and Secondary Education
Department of Mental Health
Gamming Commission
Department of Labor and Industrial Relations
State Tax Commission
Department of Social Services
Department of Public Safety
Missouri House of Representatives
Department of Insurance
Department of Conservation
Office of Administration
Lieutenant Governor's Office
State Auditors Office
Secretary of State's Office
Attorney General's Office
Department of Agriculture
Department of Health and Senior Services
Department of Higher Education
Southwest Missouri State University
Department of Transportation
Office of the State Treasurer
University of Missouri
Department of Natural Resources
Missouri Lottery Commission
Office of the Governor
Missouri Senate
Truman State University

SOURCES OF INFORMATION (continued)

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**NOT RESPONDING: Department of Corrections, Southeast Missouri State University,
Department of Revenue**

A handwritten signature in black ink that reads "Mickey Wilson". The signature is written in a cursive, flowing style.

MICKEY WILSON, CPA
DIRECTOR
FEBRUARY 24, 2003